

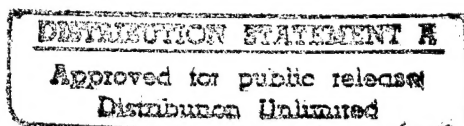
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OFFICE OF THE DIRECTOR OF
DEFENSE RESEARCH AND ENGINEERING

WASHINGTON, DC 20301-3040

15 MAR 1996

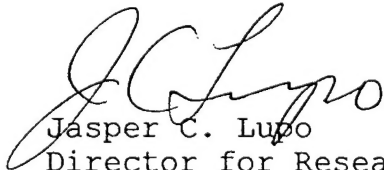
MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
CHIEF OF NAVAL RESEARCH
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DIRECTOR, CONTRACTS MANAGEMENT OFFICE, ARPA
CHIEF, POLICY OFFICE, DISA
DEPUTY DIRECTOR (ACQUISITION), DLA
DEPUTY DIRECTOR (ACQUISITION AND LOGISTICS), DMA
DIRECTOR, ACQUISITION MANAGEMENT, DNA
CHIEF, RESEARCH AND TECHNOLOGY, NSA
DIRECTOR, OFFICE OF ECONOMIC ADJUSTMENT, OUSD(A&T)
DIRECTOR, RESEARCH ADMINISTRATION, USUHS
ASSISTANT INSPECTOR GENERAL (POLICY AND OVERSIGHT)

SUBJECT: Defense Grant and Agreement Circular (DGAC) 94-4

This is the fourth DGAC under the interim-guidance, DoD Grant and Agreement Regulations (DoDGARs) that were issued in February, 1994. It transmits the DoDGARs Part 23, the final rule concerning military recruiting on university campuses.

The rule implements section 558 of the National Defense Authorization Act for Fiscal Year 1995 [Public Law 103-337 (1994)], as that section applies to grants. The final rule was effective immediately upon publication in the Federal Register on Friday, March 8, 1996.

Please forward this DGAC to offices in your Department or Agency that award or administer grants or cooperative agreements. They may remove pages 23-1 through 23-2 from the interim-guidance DoDGARs, and insert the attached pages 23-1 through 23-4 in lieu thereof.


Jasper C. Lupo
Director for Research

Attachment

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NOTE: Unlike some other parts in this interim-guidance draft of the DoD Grant and Agreement Regulations, Part 23 is codified in the Code of Federal Regulations and is in full effect.

PART 23--GRANTS AND AGREEMENTS--MILITARY RECRUITING ON CAMPUS

§23.1 Military recruiting on campus.

(a) Purpose. The purpose of this section is to implement section 558 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337), as it specifically affects grants and cooperative agreements (note that section 558 appears as a note to 10 U.S.C. 503). This section thereby supplements DoD's primary implementation of section 558, in 32 CFR part 216, "Military Recruiting at Institutions of Higher Education."

(b) Definitions specific to this section. In this section:

(1) "Directory information" has the following meaning, given in section 558(c) of Public Law 103-337. It means, with respect to a student, the student's name, address, telephone listing, date and place of birth, level of education, degrees received, and the most recent previous educational institution enrolled in by the student.

(2) "Institution of higher education" has the following meaning, given at 32 CFR 216.3(b). The term:

(i) Means a domestic college, university, or subelement of a university providing postsecondary school courses of study, including foreign campuses of such institutions. A subelement of a university is a discrete (although not necessarily autonomous) organizational entity that establishes policy or practices affecting military recruiting and related actions covered by 32 CFR part 216. For example, a subelement may be an undergraduate school, a law school, medical school, or graduate school of arts and sciences.

(ii) Includes junior colleges, community colleges, and institutions providing courses leading to undergraduate and post-graduate degrees.

(iii) Does not include entities that operate exclusively outside the United States, its territories, and possessions.

(c) Statutory requirement. No funds available to the Department of Defense may be provided by grant to any institution of higher education that either has a policy of denying or that effectively prevents the Secretary of Defense from obtaining, for military recruiting purposes, entry to campuses or access to students on campuses or access to directory information pertaining to students.

(d) Policy.

(1) Applicability to subordinate elements of institutions of higher education. 32 CFR part 216, DoD's primary implementation of section 558, establishes procedures by which the Department of Defense identifies institutions of higher education that have a policy or practice described in paragraph (c) of this section. In cases where those procedures lead to a determination that specific subordinate elements of an institution of higher education have such a policy or practice, rather than the institution as a whole, 32 CFR part 216 provides that the prohibition on use of DoD funds applies only to those subordinate elements.

(2) Applicability to cooperative agreements. As a matter of DoD policy, the restrictions of section 558, as implemented by 32 CFR part 216, apply to cooperative agreements, as well as grants.

(3) Deviations. Grants officers may not deviate from any provision of this section without obtaining the prior approval of the Director of Defense Research and Engineering. Requests for deviations shall be submitted, through appropriate channels, to: Director for Research, ODDR&E(R), 3080 Defense Pentagon, Washington, D.C. 20301-3080.

(e) Grants officers' responsibilities. A grants officer shall:

(1) Not award any grant or cooperative agreement to an institution of higher education that has been identified pursuant to the procedures of 32 CFR part 216. Such institutions are identified on the Governmentwide "List of Parties Excluded from Federal Procurement and Nonprocurement Programs," as being ineligible to receive awards of DoD funds [note that 32 CFR 25.505(d) requires the grants officer to check the list prior to determining that a recipient is qualified to receive an award].

(2) Not consent to any subaward of DoD funds to such an organization, under a grant or cooperative agreement to any

recipient, if such subaward requires the grants officer's consent.

(3) Include the clause in paragraph (f) of this section in each grant or cooperative agreement with an institution of higher education. Note that this requirement does not flow down (i.e., recipients are not required to include the clause in subawards).

(4) If an institution of higher education refuses to accept the clause in paragraph (f):

(i) Determine that the institution is not qualified with respect to the award. The grants officer may award to an alternative recipient.

(ii) Transmit the name of the institution, through appropriate channels, to the Director for Accession Policy, Office of the Assistant Secretary of Defense for Force Management Policy, OASD(FMP), 4000 Defense Pentagon, Washington, D.C. 20301-4000. This will allow OASD(FMP) to decide whether to initiate an evaluation of the institution under 32 CFR part 216, to determine whether it is an institution that has a policy or practice described in paragraph (c) of this section.

(f) Clause for award documents. The following clause is to be included in grants and cooperative agreements with institutions of higher education:

"As a condition for receipt of funds available to the Department of Defense (DoD) under this award, the recipient agrees that it is not an institution of higher education (as defined in 32 CFR part 216) that has a policy of denying, and that it is not an institution of higher education that effectively prevents, the Secretary of Defense from obtaining for military recruiting purposes: (A) entry to campuses or access to students on campuses; or (B) access to directory information pertaining to students. If the recipient is determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of this agreement, and therefore to be in breach of this clause, the Government will cease all payments of DoD funds under this agreement and all other DoD grants and cooperative agreements to the recipient, and it may suspend or terminate such grants and agreements unilaterally for material failure to comply with the terms and conditions of award."

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